

NO. 41960-2-II

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondents,

v.

JEREMIAH PARK,

Appellant.

COURT OF APPEALS
DIVISION II
12 JAN 17 AM 10:21
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable Stephen Warming, Judge

Statement For Additional GROUNDS
FOR REVIEW, Brief 2 of 2

Jeremiah J. Park
Appellant

Jeremiah Park #836010
Washington state Penitentiary
1313 N. 13th Avenue
Walla Walla, Wa 99362

pm 1/2/12

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A. ASSIGNMENTS OF ERROR

1. The State misstated the law in the closing rebuttal argument by directing the jury that to find Park guilty of first degree premeditated murder there need not be intent or premeditation. The State also misstated what constitutes self defense.

2. The State violated ER 609 and in doing so implied that the incident with Gemar was not the first time Park had stabbed some one.

3. The State's meeting with witness Rachel Samuals prior to trial to rehearse and direct testimony was improper conduct.

4. Officer conduct involving the dealings with witness Rachel Samuals were improper.

5. Defense counsel's failure to object to the State's misstatements of the law in the closing rebuttal argument was deficient performance.

6. Defense counsel's failure to investigate and follow-up concerns the appellant communicated to counsel prior to trial was deficient performance.

7. Defense counsel's performance was deficient for not researching case law for the conduct that constitutes murder in the first degree by extreme indifference to human life and motioning to dismiss prior to trial.

8. The Court ruled that the defense would not be allowed to present the impeachment evidence that Rachel Samuals was released from jail to testify.

9. The Court overruled the defense's objection to relevance to officers Zeischer and Streissguth testifying to the Gemar family's being distraught when contacted by officers.

10. The Court overruled the defense's objection to witness Skylar Gemar not being excluded from the trial proceedings apart from testifying.

11. The Court overruled the defense's request to dismiss juror #1, after that juror raised concern of a relationship with the witness Skylar Gemar.

12. The Court overruled the defense objections to allowing officers Davis.

and Streissguth testimony violating Hearsay rules.

13. The Court failed to give proposed jury instruction WPIC 16.05.

14. The Court failed to give a proposed jury instruction: "Premeditation is distinct from intent. It is possible to form an intent to kill that is not premeditated." (Non-pattern instruction)

15. The accumulation of errors deprived appellant of a fair trial.

16. The evidence at trial was insufficient to prove intent beyond a reasonable doubt.

17. The evidence at trial was insufficient to prove the absence of self defense beyond a reasonable doubt.

*18. Statements made by appellant to officers Davis and Hollowell should have been suppressed due to invalid waiver of rights and appellant was prejudiced by these statements at trial. *

*This issue was addressed in the separate brief:

'Statement of Additional Grounds For Review Brief 1 of 2' *

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B. STATEMENT OF THE CASE

1. Procedural History

The Cowlitz County prosecutor charged appellant Jeremiah Park with one count of first degree premeditated murder or in the alternative first degree murder by deliberate indifference to human life, one count of intimidating a witness, and one count of possession of heroin.

A 3.5 hearing was held on September the 2nd, 2010 to determine the admissibility of statements made by appellant on the night of February 19th, 2010 and in the early morning hours of February 20th, 2010.

The judge Honorable James Stonier ruled on those statements on September the 9th of 2010 and filed those findings on November the 30th of 2010 (cp 79). * The issues of that hearing were briefed in the first of two briefs on the Additional Grounds for review. *

After a pretrial interview of witness Rachel Samuals where the defense counsel, the defense investigator, and the prosecutor were all present; the prosecutor filed a motion to amend the charge of Intimidating a witness against appellant because during the interview Rachel Samuals admitted that appellant never threatened her. However, on the first day of trial the prosecutor removed that motion to amend the

charge of Intimidating a witness and stated, in open court, it was because "Tampering with a witness is a lesser included offense for Intimidating..."

Park pled guilty to the possession charge prior to trial. The trial court denied Park's motion to dismiss the premeditated murder charge and accepted the appellant's motion to dismiss the murder by extreme indifference following the State's case in chief. 6RP 171-73

A jury found Park guilty of first degree premeditated murder and intimidating a witness. CP 127, 131. The jury returned special verdicts finding Park was armed with a deadly weapon and "displayed an egregious lack of remorse." CP 126, 134. The jury also returned a special verdict finding Park attempted to induce a witness not to "report information relevant to a criminal investigation." CP 135.

Park was sentenced to a standard range of 380 months in prison, plus a consecutive 24 months for using a deadly weapon.

CP 136-145; 9RP 35-36. Park timely appeals. CP 146.

2. Trial Testimony

On the full-mooned Friday night

of February the 19th of 2010, Joseph Gemar was drinking vodka, smoking pot and making life uncomfortable for other people. Joe stated he had "been in three fights" prior to going to Park's home. Joe decided to go to Park's home. Park was an acquaintance who Joe knew to be a drug addict. Joe did not call Park prior to riding a bicycle to Park's home. Joe arrived at Park's home just after 11pm. Joe knocked on the front door, but did not wait to be invited in. Joe entered, without permission, through the front door. Joe proceeded into Park's home and was met by an alarmed Park in the front room. Park was clothed in only a pair of boxer briefs and a t-shirt. Joe was close enough to Park that Park could smell the stench of liquor Joe was emitting. Park was passive and backed away from Joe. Park sat on the couch and asked Joe "Whadayuh want?" Joe answered, "I just wanna get high. I just wanna get high." Park then asked Joe "Whaddya got?" Joe approached Park and dumped onto Park a cell phone, a food stamp card and other miscellaneous pocket contents. Park gathered the things Joe had spilled, handed them back and told

Joe that if he would go to the store and get some food that Park would furnish him with some heroin. While Park was telling Joe this, there was a knock at the back door. Joe opened the back door to reveal the sickly looking couple, Ashley Jorgensen and Cody Wade. Jorgensen and Wade stepped into Park's home. Immediately, Joe began crudely coming onto Jorgensen. Joe then turned to Wade and asked if he was "getting jealous?" Then told Wade "I've been in three fights today. You wanna be number four?"

Joe postured up on Wade. At this Park called from the couch for Joe to "leave them alone." [Wade and Jorgensen]

Joe turned toward Park and noticed a woman. This woman was Rachel Samuals. Rachel had left Park's room to investigate the disturbance when Joe threatened Wade. When Joe saw Ms. Samuals he approached her and began fondling her breasts.

Samuals demanded Joe to stop. Joe did for a second or two, then Joe groped her breasts again.

At this Park rose from the couch and sternly called to Joe "Try that on some one else."

Joe turned from feeling about Samuals breasts to see Park standing and approaching. Joe seized Park and pushed him across the living room to a padded table just outside the entrance of Park's bedroom. Joe pinned Park to the table with a full nelson wrestling move and with Park pinned Joe began to thrust against Park for 10 to 15 seconds in a mock sexual motion. Joe pushed away from Park and proclaimed to all present "I'm not gay. I'm not gay. I'm not gay." Joe apologized and he and Park shook hands.

Park left the company in the living room, went to his bedroom and put on some pants. Park returned to the living room clothed and was met by Joe voicing a strong desire to use heroin. Park told Joe to go to the store and get some milk, cereal and snacks, to exchange for drugs, then Park would give Joe some heroin. Joe said "no, get me high now."

Park replied to Joe "You can go to the store and get me some food or I've got nothing for you."

"F*** that." Joe said.

"Then you can kick rocks on down the road." Park demanded.

Joe grabbed Park by the head and struck

Park with his head multiple times and struck Park with his fist, while pushing Park into Park's bedroom.

Wade got between Park and Joe and told Joe to stop while separating the two. Wade pulled Park to the front room where Park said to Wade, "I can't believe he would disrespect me in my own house."

Meanwhile, Samuels and Jorgensen had sat Joe down on Park's bed and tried to calm Joe down.

Park reentered the bedroom and seized Joe in an attempt to physically remove Joe from Park's home. Joe and Park grappled. Ultimately, Park's attempt was a failure. Joe placed Park in a stranglehold. Park struggled free and fled from Joe.

Park returned to the bedroom within seconds. Joe was standing as Park said to him, "Leave."

Joe came toward Park instead of moving to leave as directed.

Park met Joe's approach with a paring knife that Park had retrieved before returning to demand Joe to "leave." When Park stabbed Joe, he simultaneously pushed Joe with his unarmed left hand. Joe lost his balance and fell with

his back against the bedroom's wall and his right side next to Park's bed. Joe placed his right hand to wound. Joe then placed that same hand onto Park's bed, pushed himself up and barreled into Park, pushing Park against the wall opposite the bed.

As Joe pushed Park against the wall he received one or two grazing wounds from Park's small kitchen knife.

Joe decided to leave at this point and halted the attack on Park. Joe fled from Park's home through the front door of Park's home and ran a block away to 297 20th avenue and pounded on that home's front door. The home's occupant called 911. Joe was transported to the hospital in an ambulance, accompanied by the Longview Police officer Tim Deischer. Joe died at the hospital shortly before midnight. Tim Deischer inventoried and photographed Joe's wounds. Then notified the family, who had arrived at the hospital in concern of Joe's passing.

When Joe halted the attack,

Park did not make any motion to hinder Joe from leaving and Park did not pursue Joe as he fled.

Within eight to twelve minutes of Joe fleeing Park's home, Park called 911. Park reported the stabbing, but lied and said that Joe was armed and that Park was wounded by Joe. Before calling 911 Park tried to get Jorgensen and Wade to go find Joe and see if Joe needed help and if so take Joe to the hospital. Jorgensen and Wade refused to look for Joe and just demanded Park give them heroin.

Despite Park giving them heroin, they still refused to look for Joe and left Park's home.

Park panicked. He asked Samuels to dispose of drug paraphernalia and other items that may be tainted with the presence of blood. Park made calls wishing to find a way to flee. Then despite contacting friends to help Park do so, Park decided to report the incident, although he would report it inaccurately. Park went out back and threw away the kitchen knife, changed his clothes inside, told Rachel his plan to

report the incident, made sure she had disposed of evidence, then he took a handful of generic valium pills, and made the 911 call. Park did all these things within the eight to twelve minutes of Joe leaving the home.

In the ensuing investigation, a very intoxicated Park was taken to the Longview Police Department headquarters for interview, before being taken to jail. Rachel Samuals was taken to the Longview Police Department for interview. Officers did not jail Samuals despite there being a warrant for her arrest.

Within the next few weeks Rachel Samuals would be called upon by police to write more elaborate statements. One of these statements was ordered and directed by detective Davis. He made sure Samuals included certain things in her statement. One was that Samuals had witnessed Park receive a call from Joe and invite him over. Evidence later proved that no such call ever took place. Officers still did not act on the arrest warrant for Samuals.

Three weeks prior to trial the prosecutor met with Samuals and

practiced and rehearsed her testimony for trial. The prosecutor did not record this meeting or notify the Court or the defense counsel of this meeting.

Samuals was released from jail to testify at the murder trial.

Some of Samuals testimony was contrary to all her prior statements. One of these discrepancies that was easily identifiable: when she said Joe had arrived. All of Samuals prior statements have Joe arriving after Wade and Jorgensen. At trial Samuals testified that Joe arrived first.

The medical examiner testified that the mortal wound was a one centimeter stab wound to the upper right chest. The doctor also testified that the knife was no bigger than 3/4 inches wide.

Joe had two other superficial wounds that were possibly caused by the same knife. Joe also had scratches on the neck. These were possibly caused by fingernail scratches.

C. ARGUMENTS

1. The prosecutor misstated the law in the closing rebuttal.

argument by directing the jury that to find Park guilty of first degree premeditated murder there need not be intent or premeditation. The State also misstated what constitutes self defense.

The prosecutor stated that because Park did nothing as Joe Gemar lay dying "is just another action of his intent to kill Joseph Gemar. It shows he committed premeditated murder, shows he is guilty of that crime." and "Defense counsel argued if this was really a premeditated murder, why not give him enough heroin to overdose? Again, that goes back to that conventional idea of premeditation, you know, that that plan that is hatched and then, you know, all the intricate steps to make -- to bring that plan to fruition, but again that's not what premeditated murder is."

When the trial opened Park was charged with murder in the first by extreme indifference to human life. The prosecutor used VOIR DIRE and opening statements to explain to the jury that first degree murder need not be premeditated and that first degree murder can be shown by a disregard for human life. The prosecutor went

to great lengths explaining this theory of extreme indifference for human life first degree murder. This theory, as the prosecutor explained it, made it sound very much like the conduct that constitutes manslaughter.

The statements the prosecutor made in voir dire coupled with the statements made at the closing rebuttal were likely to mislead or confuse the jury to convict appellant of first degree premeditated murder wrongfully.

The Court dismissed the murder by extreme indifference after the state's case in chief. Because the state focused on getting the jury to find guilty of first degree premeditated murder by misstating the law, appellant contends the prosecutor's actions were ill-intentioned and a flagrant deviation from proper conduct.

The other issue of the prosecutor misstating also arose during the closing rebuttal argument: "Deadly force can only be used if its an imminent threat and if its an imminent threat of great bodily injury or an imminent threat of death. Severe pain and suffering or death." This statement was improper because it negates that:

Imminent danger need not be present in fact. State v. Theroff, 95 Wn.2d 385, 390, 622 P.2d 1240 (1980).

The danger need only be perceived by the slayer.

Actual danger is not required.

State v. Lefaber, 77 Wn. App 766, 893 P.2d 1140

2. The State violated ER 609(b) and ER 609(d) and in doing so implied that the incident with Gemar was not the first time Park had stabbed some one.

The record relating to this error is as follows:

prosecutor: Had alot of adrenaline going through your system at that point?

Park: A lot of fear.

Prosecutor: So --

Park: I had just been in an altercation where I had used a weapon against another human being for the first time.

prosecutor: That was the first time you had ever used a weapon against another human being?

defense counsel: Your Honor, I'm going to object.

The Court: Overruled.

Prosecutor: The first time you ever used a weapon against a human being. . . .

Who is Kristin Hansen?

Park: That is my ex-girlfriend.

Prosecutor: All right. And did you ever use a weapon against her father?

Park: Absolutely not, ma'am. Actually, I've got -- If you're talking about the assault four conviction in 2007 --

defense counsel: Objection --

The Court: Sustained.

Park: She was there that if you want to call her as a witness.

The Court: Okay. You need to wait for a question.

Prosecutor: Okay. I apologize. I move to strike that. Did you thought in fact -- was there an incident in Pacific County involving a knife?

Park: I took a knife away from somebody who had pulled a knife out on me. I never used it. I never inflicted injury with it on them.

Prosecutor: As a result of that incident in Pacific County --

Park: What year was that? Was that January 8, 2000?

Defense counsel: Your Honor, I'd ask for --

The Court: Lets go ahead and take a break at this point.

The Court called for recess.

When the proceedings continued the

Court allowed the prosecutor to resume cross examination of Park and the prosecutor attempted to minimize the effect of the assault four being mentioned. However, there was no corrective instruction given for the mention of the incident involving a knife.

Appellant contends that the state's implying Park had other instances of using a knife on another human being was so prejudicial that no corrective instruction could cure the prejudice of the prosecutor's implications that Park had used a knife against another human being in past offenses.

The past offenses are not admissible under ER 609. Park's conviction from Pacific County was a juvenile conviction over 10 years old. Under ER 609(b) "evidence of a conviction more than 10 years old... is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence."

The State never gave notice to the defense and the prejudice that

resulted from the prosecutors conduct prejudiced appellant and denied him a fair trial.

3. The State's prosecutor meeting with witness Rachel Samuals to rehearse and direct testimony was improper conduct.

Rachel Samuals testified to meeting with the Cowlitz County deputy prosecutor Michele Shaffer three weeks prior to Park's trial to rehearse her testimony.

At the trial Rachel Samuals testimony became contrary to all of her prior statements in key areas. One of these was Samuals stating that Gemar arrived after Wade and Jorgensen in all her prior statements, yet at the trial testifying that Gemar arrived first. Another piece of her trial testimony that was different from her prior statements was which door Gemar fled from when leaving Park's home. Another thing that suggests the testimony being practiced were the way she answered many questions with: "I don't recall."

Nevertheless, the meeting of Rachel Samuals with deputy prosecutor without giving notice to the Court or defense.

was improper conduct that may have effected the trial and denied appellants a fair trial.

4. Officer Conduct Involving the dealings with witness Rachel Samuels were improper.

At the time of Rachel Samuels writing her statements for officers, Samuels had a warrant for her arrest and the officers did not act on the warrant for Ms. Samuels arrest by arresting her, they allowed her to curry favor by writing statements.

On February 22nd, 2010, Samuels was called to the Longview Police department headquarters by detective Charles Davis. Davis directed Samuels on things to include in her written statement. One of these was that she had witnessed Park receive a call from Gemar, then invite Gemar over. Evidence would show that no such call had taken place. This part of the statement may have been used in the state's charging information to justify charging Park with premeditated murder.

It is appellants stance that the officers failure to act on the arrest

warrant was improper and that Rachel Samuals acted to curry favor of officers.

5. The Defense failure to object to the prosecutor's misstatements of the law during closing rebuttal argument was deficient performance.

6. The Defense failed to investigate and follow-up the concerns the appellant communicated to counsel prior to trial.

(refer to appendix to view the letters received by defense counsel that identified appellants directives and concerns)

Appellant requested that defense counsel have items fingerprinted to show the absence of appellants fingerprints and the presence of Rachel Samuals fingerprints. Had this been shown it would have been likely that the jury would have given less weight to the portions of Samuals testimony based upon fabrications and assumptions and the outcome of the trial would have been different. This supports a finding of ineffective assistance of counsel.

7. Defense counsel's performance was deficient for not researching case law for the conduct that constitutes murder in the first degree by extreme indifference to human life and motioning to have this charge dismissed prior to trial.

Reasonable conduct for an attorney includes carrying out the duty to research the relevant law.

Strickland, 466 U.S. at 690-91.

8. The Court ruled that the defense would not be allowed to present the impeachment evidence that Rachel Samuals was released from jail to testify.

Appellant contends that being denied to present this evidence, denied the right to a fair trial and that had this evidence been presented it would have been likely to effect the weight given to Rachel Samuals testimony and statements, thus would have been likely to effect the outcome of the trial.

9. The Court overruled the defense's objection to officers Deischer and Streissguth testifying to the Gemar family's being distraught when contacted.

by officers.

The Court overruled the defense's objections to relevance of officer Deischer testifying to the Gemar family being upset when he contacted them, and officer Streissguth testifying to the reaction of the Gemar family when notified of Joe Gemar's death.

This testimony was not relevant to whether or not appellant acted in self defense and was improper because its purpose was likely to distract the jury from the issues of law by playing on the emotions of the jury.

10. The Court overruled the defense's objection to witness Skylar Gemar not being excluded from the trial proceedings apart from testifying.

Appellant contends Skylar Gemar's presense was improper and there is a possibility that influenced the outcome of the trial.

11. The Court overruled the defense request to dismiss juror #1, after that juror raised concern of a relationship with witness Skylar Gemar.

The defense requested that the Court further inquire of the juror's relationship with the witness and the possibility

of prejudice.

The Court refused.

12. The Court overruled the defense objections to allowing officers Davis and Streissguth's testimony violating Hearsay rules.

On March 3rd, 2011 the Court ruled to admit two of the written statements made by Rachel Samuals.

These statements are different from each other. The Court allowed officers Davis and Streissguth to read from both statements. This bolstered the credibility of those statements.

Whenever you have police officers reading from statements it gives those statements an air of credibility despite the origin of those statements.

Appellant's position is that to allow a witness to write multiple statements, one of which directed by an officer, then to bolster the statements' credibility by police officers reading those statements inconsistent with in-court testimony is duplicative, inappropriate and was prejudicial.

13. The Court's failure to give proposed

jury instruction 16.05.

"Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended." WPIC 16.05

Appellant contends that if this instruction was given the jury may have reached IN considering that since Gemar had attacked appellant, refused to leave when told, overpowered appellant in the appellant's attempt to physically remove Gemar, that the amount of force was reasonable, despite the end effect of the force used.

Thus had this instruction been given the outcome of the jury's deliberations may have been different.

14. The Court failed to give the proposed jury instruction:

"Premeditation is distinct from intent. It is possible to form an intent that is not premeditated." (Non-pattern instruction)

This instruction, had it been given, may have led the jury to consider the concepts of intent and premeditation further.

Given the errors that were probable to have confused the jury of the conducts that constitute intent and premeditation, this instruction may have been helpful if given.

15. The accumulation of errors deprived appellant of a fair trial.

The combined effect of errors may require a new trial even though none of the errors, standing alone is of sufficient gravity to constitute grounds for a new trial. State v. Coe, 107 Wn. 2d 772, 789, 684 P.2d 668 (1984).

Appellant contends that if the Court does not find the assignments of error warrant a reversal standing alone that certainly the combined effect of errors warrant a new trial for appellant.

16. The evidence at trial was insufficient to prove intent beyond a reasonable doubt.

The jury was not instructed that some time must elapse sufficient to form intent. Nor was the time sufficient in this case for Park to form an intent. This case reflects a moment in time.

No fixed or definite period of time need elapse so long as the jury is

Informed that some time must elapse sufficient for the defendant to form an intent. State v. Griffith, 91 Wn. 2d 572, 577, 589 P.2d 799 (1979); State v. Tiekka, 8 Wn. App. 736, 741, 509 P.2d 101 (1973).

Nor do appellant's actions reflect an intent to end Joe Gemar's life.

The knife Gemar was stabbed with was not necessarily a deadly weapon. The mortal wound was a one centimeter wound. Had Park sought to effect death Park would have retrieved a large knife that would be more likely to kill, instead of the small wooden handled paring knife.

Had Park intended to end Gemar's life Park would not have allowed Gemar to flee Park's home alive.

Furthermore, Park implored witnesses Ashley Jorgensen and Cody Wade to go and find Gemar and if he needed help to take Gemar to the hospital.

All of these things show that Park lacked the intention to kill and that the evidence at trial was insufficient to prove intent beyond a reasonable doubt. Those actions of Park present a reasonable doubt.

The evidence at trial was insufficient to prove the intent to kill Joe Gemar.

17. The evidence at trial was insufficient to prove the absence of self defense beyond a reasonable doubt.

Joseph Gemar entered Park's home without permission and was asked to "leave." Gemar attacked Park when Park told Gemar to "kick rocks on down the road." Prior to being told to leave Gemar had sexually assaulted one witness, threatened another and demanded drugs from Park.

Gemar's conduct can be interpreted as robbery in the first degree.

RCW 9A.56.200 Robbery in the first degree.

(1) A person is guilty of robbery in the first degree if: (a) In the commission of a robbery or of immediate flight therefrom he or she:

... (iii) Inflicts bodily injury.

It is undisputed fact that

Gemar demanded Park's property and caused Park injury. Furthermore this attempted robbery took place in Park's home. Gemar entered Park's home without permission and Gemar remained despite Park demanding that Gemar leave. When Park directed Gemar to leave Gemar attacked Park. Thus Gemar's conduct can be interpreted as Burglary in the first degree RCW 9A.52.020 Burglary in the first degree. (1) A person is

guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building... the actor... (b) assaults any person.

It is undisputed fact that Gemar entered Park's home without permission, threatened witness Cody Wade, assaulted witness Rachel Samuels in a sexual manner, demanded Park's property, attacked Park when Park refused to give Gemar drugs AND when Park demanded Gemar to leave.

RCW 9A.16.050 Homicide - By other person - When justifiable. Homicide is also justifiable when committed either:
(1) In the lawful defense of the slayer, ...
... (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is.

As the appellant testified:
"I did not intend to kill Joseph Gemar."
and the appellants actions reflected his lack of intention and the use of force against Gemar was lawful, this case falls under the excusable homicide statute as well.

RCW 9A.16.030 Homicide - When excusable. Homicide is excusable when committed by accident or misfortune in doing any lawful

act by any lawful means, without criminal negligence, or without any unlawful intent.

Also, as the appellant stated at sentencing, the appellant exercised his right to bear arms in defense of himself. The Washington State Constitution, Article 1, Section 24 The right to bear arms. Provides the right of the individual citizen to bear arms in defense of himself or state and this right shall not be impaired.

Appellant contends that for the state to prosecute him for exercising his right to bear arms in defense of himself, the state is acting against its own constitutional provisions.

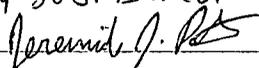
The homicide was justifiable and excusable, and the state did not meet the burden of proving the absence of self defense beyond a reasonable doubt.

D. Conclusion

The appellant was denied a fair trial. The evidence was insufficient to prove intent to effect death and Park acted lawfully. Therefore the conviction for first degree premeditated murder must be vacated and the trial court barred from trying Park for any degree of murder.

Dated this 5th day of January, 2012.

Respectfully submitted,


Jeremiah Park
Appellant

APPENDIX

8-3-2010

Jeremiah Park
TO

Thomas Ledewer
& Josh BALDWIN

To the best of my Recollection,
Without having The Works of fiction
Fabricated by Ms Rachel SAMUALS &
Coarview PD, here ARE A few of the
LIES I CAN point out that CAN be
brought INTO the Light:

- ① Which Door GEMAR fled from.
- ② The Statements Rachel made About cody:
Cody never gave me \$20 NOR did he say:
"Thanks for the fat sack Beo"
- ③ She stated GEMAR called, which never
happened
- ④ She stated I broke some phone to make
it look like a struggle. PRINT the phone
- ⑤ That I was collecting evidence & putting
it IN Bags: PRINT the Bags
- ⑥ What She stated I WAS WEARING certain clothes
and she saw GEMAR & I Both covered in
Blood.
- ⑦ That Ihe saw A struggle & GEMAR stabbed
4 times
- ⑧ That she SAID she WAS my "GIRLFRIEND"
when IN fact she was simply hired to clean
my house for my new Room mate to move in. ASK MITCH
- ⑨ she stated I looked at her & SAID I "Gutted" GEMAR
WHICH IS AN obvious ASSUMPTION ON her part &
INVENTION. ASSUMING I had to have "Gutted" or something

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TO: Joshua Baldwin & Thomas Ledueces

From: Jeremiah Park

When SAID stabbing happened I WAS Attired for bed, simply WEARING A PAIR OF grey boxer briefs & A T-shirt, (to the best of my recollection) IN ONE REPORT, AND A STATEMENT made by the hostile witness, RATHER Author & co-conspirator of fictitious fabrications,

That I APPEARED covered IN blood. I would like to know IF those clothes that I put ON before I dialed 911 to Report AN INCIDENT had OCCURED.

Well, I would like to know what time the clothes I WAS WEARING were entered INTO evidence & IF they were LATER Removed from evidence, OR the officers who went to the Autopsy, were logged AS ENTERING the evidence room ABOUT THAT time & RETURNING later. (of course I do believe these police ARE NOT ~~the~~ lacking IN subtlety & IF that were so may have covered their tracks) But still see A need to EXPLORE, this AS A POSSIBLE ISSUE.

8-20-2010

pg 2 of 2

To: Josh Baldwin & Thomas Ledeker
From: Jeremiah Park

On the Emergency Room
Inventory of the Wounds of
the deceased (GEMAR)

It stated ONE, ONE centimeter
wound IN the center chest.

AND one, two centimeter
SUPERFICIAL wound on GEMAR'S
SIDE. AS A complete inventory of MARKS

Now ON the Autopsy
PAPER WORK there ARE
several wounds NOT mentioned
which RAISES the question
of detectives fabricating
post-mortem wounds ON
GEMAR.

THIS IS AN ISSUE I would
like to explore AND
possibly RAISE

IS IT possible to have our own
coroner examine the deceased to
determine what wounds ARE
post-mortem?

I would like to see you AS
SOON AS possible, thank you Jeremiah
Park

Pg 1 of 3

To: Thomas Ledvicer
Josh Baldwin
ATTORNEYS AT LAW
Office of Public Defence

From: Jeremiah Park
Hostage/Political Prisoner
Cowitz Jail

12-5-2010

To my Legal Council; This is a list of concerns AND things I would like accomplished for TRIAL AND other legal issues:
Interview Mitch MacNamee.

- 1) File MOTION to Reconsider the Ruling of the 3.5 hearing.
- 2) When it is appropriate, SEVERE the possession of heroin charge, by whatever means NECESSARY, EVEN IF IT MEANS pleading guilty to the possession charge.
- 3) MOTIONS to suppress ALL evidence that IS prejudicial AND IRRELEVANT to whether OR NOT I had the legal right to defend myself, on the NIGHT IN question.
- 4) I would like to REVIEW exculpatory evidence.
- 5) MOTION to suppress ALL OPINIONS, ASSUMPTIONS AND FABRICATIONS by ALL PARTIES involved IN INVESTIGATION of my charges.
- 6) TALK to Josh ASAP AND finish filing 1983 correctly AND discuss filing another for being denied my religious diet.
- 7) Would like my COUNCIL to employ A specialist IN the psychology of drug addicts AND the effect the states of witness' psychosis AT VARYING times throughout investigation AND to prove Rachel's distortion of facts due to witness leading by Detectives.

pg 2 of 3

To: Thomas Ledbetter, Attorney at Law
Josh Baldwin, Attorney at Law
Office of Public Defense

From: Jeremiah Park
Hostage/Political Prison
Conditions Act

12-5-2020

(#7 continued from pg 1)

7) AS A REASON FOR her CONFUSION & FABRICATIONS & Prejudice

8) Would like my COUNCIL to INTERVIEW the EMERGENCY ROOM PERSONEL that INVENTORIED All WOUNDS on GEMAR At the time of his decease. Also, how WOUNDS "MIRACULOUSLY" Appeared upon the deceased's face, Post-Mortum; AND were listed upon the CORONERS REPORT ~~AS~~ AS "stab wounds to the face"

8b) WERE the detectives present at the autopsy? (8c) Were these WOUNDS caused by post-mortem MALICE by INVESTIGATING officers? (8d) Are these FACIAL WOUNDS possibly the Result of GEMAR "been IN 3 fights today"?

9) What time the green PANTS were entered INTO evidence AT L.P.D. (9b) WERE these PANTS later Removed from evidence before detectives Attended autopsy? (9c) What Are the PROCEEDURES for the evidence IN the LPD evidence Room? Were the detectives IN the Room, before they Attended autopsy? I WAS NOT WEARING green PANTS when I defended myself.

10) I would like to go over All Jury INSTRUCTIONS And Have the JURORS to weigh three sections of Article one of the WASHINGTON STATE Constitution: 7, 24, 3 Article 1, section 7: No person shall ~~have~~ be disturbed IN his PRIVATE AFFAIRS, OR home INVAded, WITHOUT AUTHORITY of law.

(CONTINUED ON PAGE #3)

Opening / Closing Proposals for Statements

JAMES MADISON, 4th President of the United States, Quote; ON SELF-PRESERVATION BEING A LAW OF NATURE & WHETHER THE LAWS OF THE LAND CHANGE, THE LAWS OF NATURE WILL ALWAYS BE THE SAME AND THE HUMAN SELF PRESERVATION.

The prosecutor IS going to spin a web AND ITS her job to spin webs IN ORDER to get a conviction but we ARE going to be forced to TEAR those webs down & mess here story up with the facts. "SORRY" (while looking at the prosecutor, "we have to ruin a perfectly good story with the facts")

COURT OF APPEALS
DIVISION II

12 JAN 17 AM 10:21

STATE OF WASHINGTON

BY STATE OF WASHINGTON
Respondent)
v.)
JEREMIAH PARK)
Appellant)

NO. 41960-2-II

AFFIDAVIT OF SERVICE
BY MAILING

I, Jeremiah Park, being first sworn upon oath, do hereby certify that I have served the following documents:

Statement of Additional Grounds Brief 2 of 2

Upon: David Pozoha, Administrator/clerk &
COURT OF APPEALS
DIVISION II
950 Broadway, Suite 300
TACOMA, WASHINGTON
98404-3694

Michelle Schaffer
Cowlitz County Prosecuting Attorney Office
312 SW 1st AVE
KELSO, WASHINGTON
98626

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 11th day of January, 2012.

Jeremiah Park #836010
Name & Number Jeremiah Park #836010

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.